

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5057 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
PATEL KANCHANBHAI MATHURBHAI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR JITENDRA M PATEL for Petitioners  
Mr.A.J. Desai, ASSTT. GOVERNMENT PLEADER for  
Respondent No. 1

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/99

ORAL JUDGEMENT :

The petitioners seek to challenge the orders of the Mamlatdar, Deputy Collector and the Tribunal which are Annexures 'B', 'C' and 'D' respectively to the petition, by which 3 acres, 27 gunthas of land out of the total holding of 39 acres, 27 gunthas held by the petitioners was declared to be surplus and it was declared that petitioner no.1 was entitled to hold 36

acres of land as enumerated in the first order of the Mamlatdar.

2. The only contention which was raised during the arguments was that the authorities overlooked the fact that under sec.6(3B) of the Gujarat Agricultural Land Ceiling Act, 1960 ("the Act" for brevity) the petitioners' family was entitled to hold the land in excess of the ceiling area to the extent of 1/5th of the ceiling area in view of the fact that there were more than five members in the family of whom one was a minor son. It appears from the order of the Mamlatdar that he was aware of the fact that the deposition of the petitioner no.1 was recorded. In the deposition of petitioner no.1, a copy of which is at Annexure 'A', it was categorically stated that the petitioner no.1 had a minor son, named, Mukundlal. When this fact has come on record it became evident that since there were more than five members of the family, which fact was not disputed before this Court, the family became entitled to hold land in excess of the ceiling area to the extent of 1/5th of the ceiling area under subsection (3B) of sec.6 of the Act.

3. The Supreme Court in State of Gujarat v. Jat Laxmanji Talasji, AIR 1988 SC 825, has held that in order to claim the benefit of sec.6(3B) the test which must be satisfied is twofold. First, whether claimant's family consists of more than five persons and the second that such family must also comprise of one individual and other members besides himself who must belong to all or any of the three specified categories. This test is answered in favour of the land holder in as much as the family does comprise of the land holder and other members and from out of the other members, one belongs to one of the specified categories, viz. "minor son". Admittedly, if this additional entitlement is taken into account, the holding of the family which is 39 acres, 27 gunthas is well within the ceiling limit of a little over 43 acres as stated by both the learned counsel.

In this view of the matter the impugned orders are set aside. Rule is made absolute with no order as to costs.

--

karim\*